

**ENTERED**

June 27, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ERNEST HOMER DEMPSEY,

*Plaintiff,*

v.

EDGAR VINCENT, *et al.*,*Defendants.*

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CIVIL ACTION NO. H-16-1598

**ORDER OF DISMISSAL**


Plaintiff, a state inmate proceeding *pro se*, files this section 1983 civil lawsuit seeking monetary compensation for the death of his girlfriend, Mrs. Felicia K. Vincent-Green. He names as defendants Mrs. Vincent-Green's husband, father, and sister and claims that they failed to prevent Mrs. Vincent-Green's death in 2014. He states that her death caused him irreparable emotional damage for which he is entitled to compensation.

A district court must dismiss a prisoner's claim if it is malicious, frivolous, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(i)-(ii). A complaint is frivolous if it lacks an arguable basis either in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Martin v. Scott*, 156 F.3d 578, 580 (5th Cir. 1998). An action may be dismissed for failure to state a claim when it is clear that the prisoner can prove no set of facts in support of his claim entitling him to relief. *Oliver v. Scott*, 276 F.3d 736, 740 (5th Cir. 2002).

42 U.S.C. § 1983 of the Civil Rights Act provides redress for persons “deprived of any rights, privileges or immunities secured by the Constitution or laws of the United States” by a person acting under color of state law. Thus, a plaintiff in a civil rights suit must show that the conduct of which he is complaining was committed by a person acting under color of state law. Here, plaintiff fails to allege any facts that would give rise to the named defendants being state actors for purposes of section 1983. Nor does he allege any facts showing that the defendants deprived him of any rights, privileges or immunities secured by the Constitution or laws of the United States.

Plaintiff’s claims and this lawsuit are DISMISSED WITH PREJUDICE as frivolous and for failure to state a viable claim upon which section 1983 relief can be granted. Any and all pending motions are DENIED AS MOOT. This dismissal constitutes a “strike” for purposes of section 1915(g).

Signed at Houston, Texas on June 27, 2016.



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Gray H. Miller  
United States District Judge